

1 Merit System.

2 Q. And would that individual firefighter then
3 be subject to potential discipline or firing?

4 A. I think so.

5 Q. Same question. Would the firefighter
6 violate the Merit System's rules and regulations and
7 be subject to discipline if he bypassed the chain of
8 command and spoke directly to the media about
9 inadequate protective gear or inadequate fire
10 department equipment and vehicles?

11 A. I feel it's a violation of the Merit
12 System.

13 Q. And that individual be subject to
14 discipline or firing, correct?

15 A. Correct.

16 Q. Would it be a violation of the Merit System
17 rules and regulations if a firefighter bypassed the
18 chain of command and spoke directly to a media
19 representative about concerns he had over response
20 times or inadequate dispatching procedures in the
21 fire department?

22 A. I feel that would be a violation.

23 Q. And would it also be a violation of the
24 Merit System rules and regulations, subjecting a
25 firefighter to discipline or firing, if he bypassed

1 the chain of command and spoke directly to a media
2 representative about employee morale in the fire
3 department?

4 A. I feel it would be a violation.

5 Q. Would it also be a violation of the Merit
6 System rules and regulations if a firefighter
7 bypassed the chain of command and spoke directly to
8 a media representative about public safety related
9 to fire department operations?

10 A. I would think so. There are certain
11 procedures on the ground where they've got ways of
12 doing it through the chain.

13 Q. What do you mean specifically by that?

14 A. They have got ways to talk with people and
15 get it to whomever they need to talk with.

16 Q. On all of those subjects I just covered --
17 staffing, health and safety of firefighters,
18 protective gear, equipment in the fire department,
19 morale, safety -- would it be a violation of the
20 Merit System rules and regulations if a firefighter
21 addressed those issues directly with the city
22 council without pursuing it through the the chain of
23 command?

24 A. I think it would be, yes.

25 Q. And would that individual firefighter then

1 be subject to discipline or potential firing if he
2 addressed those issues directly with the city
3 council without going through the so-called chain of
4 command?

5 A. I think it would be.

6 Q. Okay. Has that ever happened? Has a
7 firefighter ever gone to a council meeting and stood
8 up and addressed a fire department issue?

9 A. In my 34 years? No, sir. We -- not to my
10 knowledge now. That's -- that's not to say I have
11 been to every council meeting, but there have been
12 times when they would address budget hearings, when
13 the chief would ask some to talk years ago. Now we
14 have our budget hearings, you know, in this room
15 here, and the chiefs present their cases at that
16 time.

17 Q. Have any city police officers and/or
18 representatives of the FOP ever talked directly to
19 the news media about issues of concern in the Police
20 Department?

21 A. Not to my knowledge.

22 Q. Now, going back to Exhibit 15, which is the
23 memo again from Chief Hunter to members of the
24 Phenix City Fire Department dated September 20,
25 2005, is it your understanding that the Chief

1 distributed that to all the employees in the city's
2 fire department?

3 A. It was distributed to all the employees of
4 the city.

5 Q. Okay. But this, in particular, looks like
6 it was distributed by Hunter to members of the fire
7 department. Is that your understanding?

8 A. That's correct.

9 Q. Okay. And did he do this with your prior
10 knowledge and approval?

11 A. He did.

12 Q. Okay. And did you authorize a similar memo
13 to be distributed to all City employees?

14 A. Yes, I did.

15 Q. And it required apparently all of the
16 firefighters, as well as all City employees, to sign
17 off that they had received or read this?

18 A. We would like some type of record that they
19 received -- that each one received a copy of this
20 memo.

21 Q. Did you receive any objections from any
22 city employees or firefighters about the substance
23 of this memo?

24 A. I have not, no, sir.

25 Q. Have you heard that anyone objected to it?

1 A. No, sir.

2 Q. And we discussed earlier with Chief Hunter
3 Exhibit 34, which appears to be a memorandum from
4 you, sir, as the city manager dated September 20,
5 2005, to all employees. And is this the kind of
6 memorandum that was distributed to the city workers?

7 A. That's correct.

8 Q. Okay. Let's move on to Exhibit 17,
9 Mr. Roberts. This appears to be a letter addressed
10 to you dated January 31, 2006, from a gentleman
11 named Harold A. Schaitberger, general president of
12 the International Association of Firefighters. Do
13 you remember receiving this letter shortly after its
14 date?

15 A. I do.

16 Q. And copies were evidently also sent, you
17 can see at the end of the letter, to Mayor Hardin
18 and Fire Chief Hunter. Do you see where it says
19 that?

20 A. I do.

21 Q. When you received this letter, what was
22 your reaction to it? Were you annoyed? Were you
23 upset? Anything like that?

24 A. Not annoyed or upset per se. I called the
25 Chiefs in and wanted to know what the letter was

1 about. I didn't know of anything going on at this
2 particular time.

3 Q. Didn't know anything what?

4 A. Any conflict that was going on at this
5 particular time. And I believe it was Chief Waters
6 said he would talk with David Davis about the
7 letter.

8 Q. Did you ask Chief Hunter to look into it
9 and get back to you?

10 A. I think Chief Hunter was already looking
11 into it, yes.

12 Q. But did you expect him to get back to you
13 at some time?

14 A. Yes, sure.

15 Q. And among other things in this letter,
16 Mr. Schaitberger is addressing concerns about the
17 shift schedule, the risks or possibility of
18 implementing an 8-hour shift as opposed to the
19 existing 24-hour schedule. And, among other things,
20 also addressing a concern that Mr. Davis was issued
21 a counseling form on September 20, 2005, concerning
22 his interview and statements to the local media. Do
23 you see where it says that?

24 A. I do.

25 Q. And then Mr. Schaitberger is outlining

1 certainly legal principles under the First
2 Amendment; for example, the right that public
3 employees have to free association under the First
4 Amendment. Were you aware of those protections,
5 those constitutional rights, before you got this
6 letter from Mr. Schaitberger?

7 A. I'm aware of the First Amendment rights,
8 yes, sir, and I do feel like that our First
9 Amendment rights are -- we give them their due
10 diligence as well with them, and there's procedures
11 for that.

12 Q. Have you been aware for a number of years
13 that the First Amendment also protects the right of
14 public employees to free speech?

15 A. I do under the guidelines that's given,
16 yes, sir.

17 Q. And have you been aware for a number of
18 years as city manager that it's a violation of the
19 First Amendment protections for public employees to
20 be disciplined or retaliated against if they are
21 exercising their First Amendment rights to free
22 speech and free association?

23 A. As long as it's done in the proper
24 perspective.

25 Q. What was the follow-up? You get this

1 letter. You talk to Chief Hunter, what's going on.
2 You expect he's going to get back to you. Did he
3 get back to you?

4 A. Yes, sir. They had letter. I believe it
5 was some -- David said there wasn't any problems.

6 Q. Okay. Exhibit 18, this appears to be a
7 memo from Deputy Chief Roy Waters to Chief Hunter
8 dated February 6, 2006, and it's concerning the
9 letter Schaitberger had sent to you. Did you
10 receive a copy of this memo?

11 A. I did.

12 Q. On or about the date of it in February
13 2006?

14 A. Uh-huh.

15 Q. That's a yes?

16 A. Yes, sir. I'm sorry.

17 Q. So when you received a copy of this memo,
18 you understood, I take it, that there had been a
19 discussion between Deputy Chief Waters and
20 Mr. Davis, correct?

21 A. As indicated in the letter, yes, sir.

22 Q. All right. Did you take any further action
23 or think anything further was necessary on this
24 subject?

25 A. I did not.

1 Q. And then you sent a reply letter back to
2 Mr. Schaitberger which appears as Exhibit 20 dated
3 February 14, 2006; is that correct?

4 A. That's correct.

5 Q. And you indicate in part in this letter
6 that the Deputy Chief spoke with Mr. Davis upon
7 receipt of your letter, and Mr. Davis expressed that
8 he thought everything in the department was going
9 good and that he did not have any complaints?

10 A. I used Chief Waters' letter and put what
11 was reported to me.

12 Q. Okay.

13 Q. Then at some point did it come to your
14 attention, Mr. Roberts, that Mr. Davis had placed a
15 telephone call to Mayor Hardin sometime in April of
16 2006?

17 A. Yes, sir.

18 Q. How did that first come to your attention?

19 A. To be honest with you, I don't really
20 remember. I believe it was Chief Hunter that
21 explained it to me or told me about it.

22 Q. In a conversation?

23 A. Yes, sir.

24 Q. And what did he tell you about it?

25 A. In general terms, basically that the Mayor

1 had been contacted by Mr. Davis in relation to a
2 proposed change in probationary time.

3 Q. Probationary time for new hires into the
4 fire department?

5 A. For new hires within three departments, all
6 of our public safety, which is, of course, our
7 police, code enforcers, and, of course, the fire
8 department.

9 Q. But is it fair and accurate to say that
10 since Mr. Davis was an 8-year employee of the fire
11 department, that this proposed extension of the
12 probationary period from one year to 18 months would
13 have not directly affected him? Is that a fair and
14 accurate statement?

15 A. It would not have affected him at all.

16 Q. Was it your understanding, based upon the
17 information that you have been given, that Mr. Duty
18 placed the telephone call to Mayor Hardin in April
19 of 2006 when --

20 MR. GRAHAM: You said Mr. Duty?

21 Q. I'm sorry. Is it your understanding, based
22 upon the information that you were given, that David
23 Davis, when he placed the call to Mayor Hardin in
24 April of 2006, was off duty at the time?

25 A. I don't remember asking that. I don't

1 know.

2 Q. Okay. Do you know if Mr. Davis -- or did
3 you receive any information that Mr. Davis had
4 placed that call to the Mayor in Mr. Davis' capacity
5 as president of the firefighters local labor
6 association?

7 A. The only thing the Mayor told me was that
8 David had called concerning the proposed change in
9 probationary time.

10 Q. Okay.

11 A. Now, I would have assumed it would have
12 been as a officer of the local or as a firefighter,
13 either/or.

14 Q. When you say assume, do you have any
15 personal knowledge that it might have been in his
16 capacity as president of the local union?

17 A. Well, he's both, so I assumed it would be
18 that, yes.

19 Q. Do you know or do you have any information
20 that Mr. Davis addressed any other issues when he
21 spoke to the Mayor by telephone other than extending
22 the probationary period?

23 A. I do not know any other information on
24 their phone call.

25 Q. When you were told by Chief Hunter that

1 Mr. Davis had this telephone conversation with the
2 Mayor, did it occur to you that that would have been
3 a violation of the Merit System rules and
4 regulations?

5 A. Yes, sir.

6 Q. Did you tell Chief Hunter at the time that
7 it was -- in your opinion, that was a violation?

8 A. I did not.

9 Q. Let's go to Exhibit 23. This is a memo
10 from Chief Wallace Hunter to yourself, sir, as city
11 manager dated April 20, 2006, a copy being sent also
12 to Barbara Goodwin, the Personnel Director. I take
13 it you received this memo from the Chief on or about
14 that date?

15 A. I did.

16 Q. Now, did you do anything when you received
17 this memo? Speak to anybody? Give any
18 instructions?

19 A. I don't remember whether I asked them or
20 told them that if, in the course of them conducting
21 the investigation was my understanding of what it
22 was about. But I think, there again, they were told
23 to go through the the city attorney.

24 Q. Did you voice the view to Chief Hunter or
25 Personnel Director Goodwin that in light of this

1 situation, you felt Mr. Davis should be fired?

2 A. No. I think my comment to the Personnel
3 Director was that I felt like we had a violation and
4 it needed to be checked.

5 Q. So you did voice your opinion that you
6 thought the situation was a violation?

7 A. Yes. But to check it through the attorneys
8 and to go with it.

9 Q. You'll notice Chief Hunter, in his memo to
10 you, is expressing concerns or actually criticizing
11 Mayor Hardin. You'll see that at the bottom of the
12 first page of the memo where he says, quote, Mayor
13 Hardin should refer any employee violating the chain
14 of command, as indicated in our Merit System, back
15 to their department head, Personnel Department, or
16 city manager. Failing to do so is a violation of
17 our City charter, end quote. See where it says
18 that?

19 A. I do.

20 Q. Did you agree with that assessment by Chief
21 Hunter concerning the activities and position of the
22 Mayor?

23 A. I felt like the Mayor should instruct the
24 firefighter or union president, if it concerned
25 something to do with any business, to contact me

1 since I was the designated representative for the
2 International Association of Firefighters to contact
3 on City business, which would have -- to me would
4 have violated the Merit System anyway if he was a
5 firefighter calling. So yes, there was definitely a
6 Merit System violation.

7 Q. Do you think the Mayor violated the Merit
8 System rules and regulations?

9 A. No. I'm saying Mr. Davis did. The Mayor
10 is not covered by the Merit System.

11 Q. No. But I'm addressing these points that
12 Chief Hunter is talking about the Mayor. You know,
13 I just quoted a couple sentences. My question to
14 you is did you share and agree with the viewpoint of
15 Chief Hunter that Mayor Hardin failed in his efforts
16 to comply with the city charter?

17 A. Yes.

18 Q. And why do you say yes?

19 A. I feel that that gets into the day-to-day
20 operations of the city and it should be left up to
21 the city manager.

22 Q. Have you ever spoken to Mayor Hardin about
23 this situation in your --

24 A. No, sir.

25 Q. -- your position?

1 A. No, sir.

2 Q. Are there any circumstances under which a
3 firefighter working for the city can communicate
4 with the Mayor of the city about issues that involve
5 the city fire department?

6 A. Not to my knowledge.

7 Q. Would your answer be the same if I referred
8 to city council members? Are there any
9 circumstances or situations under which a
10 firefighter can speak to a city council member about
11 issues involving the city's fire department?

12 A. They can come to the council through proper
13 procedures. And I think that that proper procedure
14 goes through their chain of command. And if we
15 cannot correct it, then we feel -- ultimately, if I
16 feel that it needs to get to the council, then I
17 will get it to them.

18 Q. You, as the city manager, will
19 raise concerns?

20 A. Yes. The bottom line, even on a work
21 session, of whatever comes before council for a work
22 session we control, whether it be the civilians
23 coming in or whomever. It's a very structured form
24 of government.

25 Q. Is a firefighter permitted to -- after

1 exhausting the chain of command on an issue
2 affecting the fire department, is that firefighter
3 then allowed to address the city council or city
4 council members on that issue?

5 A. Not by the Merit System, I don't think, no,
6 sir.

7 Q. So if such a firefighter did that after
8 exhausting the chain of command, that firefighter
9 would be violating the Merit System rules and
10 regulations?

11 A. I think he would be violating the intent of
12 the Merit System rules and regulations, I do.

13 Q. Would he be violating the language of the
14 Merit System rules and regulations?

15 A. I feel like they would be, yes.

16 Q. And would that same firefighter, after
17 exhausting the chain of command, who addressed the
18 city council as a group on an issue affecting the
19 fire department, would that firefighter be subject
20 to discipline up to and including termination?

21 A. He would be disciplined as to whatever the
22 Merit System says. But I'm going to say this
23 again: I don't feel like that it would ever get to
24 that point. I've never seen it that way. Let me
25 put it that way.

1 Q. Well, just so the record is clear, the
2 firefighter pursues the chain of command on an issue
3 affecting the fire department and addresses the city
4 council on that same issue, then would he be subject
5 to discipline, including firing?

6 A. He could be, yes.

7 Q. Exhibit 25, Mr. Roberts, is a End of
8 Employment Form involving Mr. Davis and it indicates
9 that his employment was terminated April 21, 2006,
10 and he was dismissed. It has a place for you to
11 sign, but on this copy there's no signature. Do you
12 recall having signed that?

13 A. I did not sign it.

14 Q. Now, why would that have been?

15 A. He was -- it was an appeal process, and
16 I've got to sign the ultimate letter that does the
17 discharge.

18 Q. Had you, at this point in time, verbally
19 told Chief Hunter that you approved of the
20 termination?

21 A. I knew of the termination, but I -- I knew
22 of the termination. However, I did not go into
23 details with them. I received those details -- full
24 details. You get bits and pieces at any time to any
25 termination in the city. But I will receive all the